THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

August 16, 1974

Mr. Richard Gibson, Director
University of Texas System Law Office
601 Colorado Street
Austin, Texas 78701

Open Records Decision No. 44

Re: University files on leases

Dear Mr. Gibson:

The question presented by this request under the Texas Open Records Act, Article 6252-17a, V. T. C. S., is the extent to which a state legislator as such may have access to the complete files on leases, other than those pertaining to the Permanent University Fund, under the control of the University of Texas System Board of Regents. Section 65.39, Vernon's Texas Education Code, endows the Board of Regents with broad management powers over the lands associated with these leases.

On May 15, 1974, State Representative Joe Pentony, by letter addressed to Mr. Bill Lobb, University System Associate Deputy Chancellor for Investments, Trusts, and Lands, sought "access to all leases and contracts for the use of University of Texas lands and all materials and correspondence pertinent thereto." (Emphasis added) On May 16, Mr. Lobb notified Representative Pentony that work schedules made it more convenient to respond early the next week, and on May 21 he sent Representative Pentony copies of leases on University of Texas lands as well as other supporting documents.

On the same day, Representative Pentony returned the copies of the leases stating that he had not asked for copies, and adding that he wanted to "have access to all that is in those files." Representative Pentony renewed his request on June 20th.

No request for an Attorney General's determination was made by the University System Law Office until June 28, 1974. The letter of that date declared that the request received June 21, 1974, had been misdirected to Mr. Lobb "who is not the custodian of records", but added that it was being treated as an Open Records Act request because of its citation to the Act and because a copy of the letter had been sent to Dr. Charles LeMaistre who is the appropriate custodian under the statute. The letter further stated a willingness to disclose all leases and contracts in question, but refused access to correspondence, memoranda, and other instruments pertinent thereto.

The broad purposes of the Texas Open Records Act, to give the citizenry "*complete information regarding the affairs of government*" (Section 1), cannot be effectuated by a hypertechnical reading of that statute. If a written communication to an agency can be reasonably judged a request for public information, it is a request within the terms of the Open Records Act whether the Act is named, and the agency is bound to follow the procedural dictates of Section 7(a) of the Act. Where a request has been directed to a responsible person in a position of authority, the agency cannot ignore the request simply because it may not have been directed to the legal custodian of the records. Section 7(a) only requires receipt by the governmental body. Section 5(b) of the Act clearly contemplates the probability that an agent, not the legal custodian, will control the actual use of public records.

We conclude that Representative Pentony's request of May 15, 1974, was a proper request under the terms of Section 7(a) of the Open Records Act, despite the fact that it was directed to Associate Deputy Chancellor Lobb and not to Dr. LeMaistre.

Section 7(a) of the Act reads:

> If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a

> decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information. (Emphasis added)

The effect of an agency's failure to comply with Section 7(a) is to create an added presumption that the information in question is public. "Ordinarily, this presumption will not be overcome unless there is a compelling demonstration that the information requested should not be released to the public, as might be the case, for instance, if it is information deemed confidential by some other source of law." (Emphasis added) Open Records Decision No. 26 (1974).

A compelling demonstration has not been made for the bulk of the requested materials; but our study of the sample files and a review of applicable statutes suggests circumstances under which some of the requested information might be confidential by law and that, a compelling demonstration may be made for not publicly releasing some of the information requested.

The Board of Regents of the University System has plenary power to "sell, lease, and otherwise manage, control, and use the lands in any manner and at prices . . . the board deems best . . . not in conflict with the constitution. However, the land shall not be sold at a price less per acre than that at which the same class of other public land may be sold under the statutes." Section 65.39, Vernon's Texas Education Code. Should the Board see its statutory duty to be one of conducting sealed bidding, then we believe that information pertaining to Board authorized appraisals, to the price which the Board deems reasonable, or to the substance of the sealed bids themselves, must be kept confidential to ensure the integrity of the competitive bidding. We advise the University to release all other information as to which no compelling demonstration has been made.

There remains the question whether that limited information, which Sec. 65.39, Education Code, makes confidential to the public by necessary implication, may nevertheless be disclosed to a state legislator for legislative purposes. We recently faced the problem of a legislator's right to access in Attorney General Opinion H-353 (1974) where, with reference to Sections 3(b) and 14(b) of the Act, we stated:

> While these two provisions clearly indicate that the Open Records Act does not give an agency authority to withhold information from a legislator, it does not speak to situations involving information withheld under other statutes. Whether a legislator would have a right to this information without regard to the Open Records Act would depend on the facts of the particular case and the statutory authority on which the legislator relies. (Emphasis added)

We have not been made aware of any overriding right of access, and our search for authority which would support such a claim has borne no fruit.

Very truly yours,

John L. Hill

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Attorney General of Texas

APPROVED:

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DAVID M. KENDALL, Chairman
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